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In the Supreme Court of the United States

OCTOBER TERM, 1990

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., ET AL., PETITIONERS

v.

ROBERT ABRAMS, ATTORNEY GENERAL OF THE STATE OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The Magnuson-Moss Warranty Act directs the Federal Trade Commission to establish "minimum standards" for informal dispute resolution mechanisms under the Act. This case presents the question whether the Act, or FTC regulations promulgated under the Act, preempts the informal dispute resolution provisions of New York's "lemon law."

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This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States in this case.

STATEMENT

1. Congress enacted the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act of 1975 (Warranty Act), Pub. L. No. 93-637, 88 Stat. 2183 (codified at 15 U.S.C. 2301-2312), to "improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products." 15 U.S.C. 2302(a). The Warranty Act does not require manufacturers to offer warranties, but provides that "any warrantor warranting a consumer product to a consumer by means of a written warranty shall,

to the extent required by rules of the [Federal Trade] Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty." 15 U.S.C. 2302(a). The Act requires warrantors to designate written warranties on consumer products as either "full" or "limited" (Section 2303), provides minimum standards for "full" warranties (Section 2304), and limits the extent to which a written warranty may disclaim or modify implied warranties (Section 2308). Consumers may enforce their rights under the Act by filing an action for damages and other relief in federal district court (subject to amount in controversy requirements) or in state court. 15 U.S.C. 2310(d).

In addition to providing for increased disclosure by warrantors, the Warranty Act was intended "to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms." 15 U.S.C. 2310 (a)(1). To further this goal, Congress directed the Federal Trade Commission (FTC) to "prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty" covered by the Act. 15 U.S.C. 2310(a)(2). The Act does not require warrantors to establish alternative dispute resolution (ADR) mechanisms, but a warrantor providing a procedure that meets the FTC's minimum requirements may require the consumer to resort to the procedure before filing a civil action under the Warranty Act. See 15 U.S.C. 2310(a)(3). The FTC has authority to "review the bona fide operation of any dispute settlement procedure" under the Act, and to "take appropriate remedial action" if the procedure fails to comply with federal standards. 15 U.S.C. 2310(a)(4).

The Warranty Act contains a saving clause, which provides that "[n]othing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law." 15 U.S.C. 2311(b)(1). Immediately following the saving clause is a preemption

clause, which states that the Act preempts any state labeling or disclosure laws that are not identical to 15 U.S.C. 2302, 2303, or 2304. 15 U.S.C. 2311(c)(1).

2. In 1975, the FTC promulgated regulations implementing the Warranty Act. See 40 Fed. Reg. 60,168 (1975) (codified at 16 C.F.R., subch. G). The requirements for ADR mechanisms under the Warranty Act are set out in the FTC's "Rule 703," 16 C.F.R. Pt. 703. In adopting Rule 703, the FTC concluded that the Warranty Act's goal of promoting fair and expeditious settlement of warranty disputes through ADR mechanisms "is best implemented by a careful balancing of consumer and warrantor interests." 40 Fed. Reg. 60,193 (1975). The FTC noted that "[i]f costs are too high, warrantors may decline to incorporate [ADR] Mechanisms [in their warranties]; in any event, costs will be passed through to consumers in the form of higher product prices." *Ibid.*

Rule 703 requires, *inter alia*, that ADR mechanisms be sufficiently funded, "competently staffed," and not charge any fee to consumers, 16 C.F.R. 703.3(a); that decision makers be "sufficiently insulated from the warrantor and the sponsor," 16 C.F.R. 703.3(b), and "interested in the fair and expeditious settlement of consumer disputes," 16 C.F.R. 703.4(c); and that mechanisms establish "written operating procedures," "investigate, gather and organize all information necessary for a fair and expeditious decision," and "[r]ender a fair decision," 16 C.F.R. 703.5. In addition, Rule 703 establishes a timetable for resolving disputes, 16 C.F.R. 703.5, recordkeeping and auditing requirements, 16 C.F.R. 703.6-703.7, and requires specific disclosures to consumers concerning dispute settlement procedures, 16 C.F.R. 703.2. A warrantor may operate, but "shall not incorporate into the terms of a written warranty a Mechanism that fails to comply" with these requirements. 16 C.F.R. 703.2(a).

Rule 703 states that "[t]he Mechanism may allow an oral presentation by a party to a dispute * * * only if * * * [b]oth warrantor and consumer expressly agree to

the presentation" and the mechanism fully discloses to the consumer specific information regarding the procedures of the hearing. 16 C.F.R. 703.5(f). The Rule further specifies that "[d]ecisions of the mechanism shall not be legally binding on any person," but requires the warrantor to act in good faith. 16 C.F.R. 703.5(j).

In adopting Rule 703, the FTC explained that "the consumer would be required to resort to the warrantor's complying mechanism only when pursuing rights or remedies newly created by [the Warranty Act]." 40 Fed. Reg. 60,191 (1975); see also *id.* at 60,194 ("the Act only allows the Mechanism to delay consumers seeking rights or remedies newly created by Title I of the [Warranty] Act"). Accordingly, Rule 703 requires the warrantor to disclose in the warranty "that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required under any provision of the Act."[1] 16 C.F.R. 703.2(b)(3).

3. Since 1982, nearly every State has enacted a "lemon law" to provide increased protection for buyers of new cars. New York's lemon law, originally enacted in 1983, sets a minimum duration for warranties and simplifies the procedures for obtaining relief. See N.Y. Gen. Bus. Law § 198-a (McKinney 1988). The key provisions of the New York law require manufacturers to repair, free of charge, any defect that fails to conform to a written warranty during the first 18,000 miles or two years after delivery, *id.* § 198-a(b) (Supp. 1990), and allows consumers to obtain a replacement vehicle or a refund of the purchase price if a defect occurring within

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[1] On April 11, 1988, petitioners filed a petition with the FTC asking the agency to initiate a rulemaking proceeding to determine whether the FTC should preempt state laws that impose requirements on ADR mechanisms that differ from the requirements of Rule 703. On May 16, 1989, the FTC published an advance notice of proposed rulemaking requesting public comment on whether to initiate a review of Rule 703. See 54 Fed. Reg. 21,070 (1989). The FTC has as yet taken no further action.

the statutory period substantially impairs the automobile's value, and the manufacturer is unable to repair the vehicle after four attempts or the vehicle is out of service for 30 days or more. *Id.* § 198-a(c)-(d). The original version of the New York lemon law permitted consumers to sue in state court to obtain a refund or replacement vehicle, but required consumers to resort first to a manufacturer's ADR mechanism if that mechanism complied in all respects with the FTC's Rule 703. *Id.* § 198-a(g) (McKinney 1988).

In 1986, New York amended its lemon law to add the provisions at issue in this case. The amendments were passed in response to "growing consumer dissatisfaction with informal dispute settlement mechanisms" administered by motor vehicle manufacturers. See Pet. App. 4 (citing Approval Memorandum of Governor Cuomo, S. 3342-A, Aug. 2, 1986). Under the amended statute, manufacturers are not required to offer an ADR mechanism. But the amended law provides that "[i]f a manufacturer has established an informal dispute settlement mechanism, such mechanism shall comply in all respects with the provisions of this section." § 198-a(g). The New York law provides that "[e]ach manufacturer shall require that each informal dispute resolution mechanism used by it provide, at a minimum," for a mandatory oral hearing at the request of the consumer. § 198a(m)(1)(i). The amended New York statute also imposes additional recordkeeping requirements (§ 198-a(m)(3)), and requires mechanism staff to receive training in arbitration and in the New York lemon law, § 198-a(m)(1)(i). In addition, each mechanism must provide for remedies of repair and replacement under certain circumstances. § 198-a(m)(1)(iii). The New York lemon law makes the mechanism decision binding upon the warrantor if the consumer accepts the decision within thirty days. § 198-a(h).

4. Shortly after enactment of the 1986 lemon law amendments, petitioners brought this action for declar-

atory relief. They sought, among other things, a declaration that the Warranty Act and the FTC's regulations preempt the ADR provisions of the 1986 New York lemon law amendments.

The district court held that the Warranty Act implicitly preempts the New York lemon law. The court concluded that the Warranty Act occupies the field of ADR mechanisms and leaves "no room in this system for the states to tinker with the federal criteria, possibly discouraging the creation of mechanisms." Pet. App. A33. The district court also held that the lemon law's additional provisions conflict with the Warranty Act and FTC regulations (Pet. App. A38-A39), and deprive warrantors of their "federally granted right to incorporate into their warranties and require the use of any mechanism that complies with the F.T.C.'s minimum requirements." Pet. App. A44.

5. The court of appeals reversed. The court first held that the Warranty Act's use of the term "minimum standards," and the inclusion of a broad saving clause, show that Congress did not intend to occupy the field of ADR mechanisms for warranty disputes. Pet. App. A8-A13. The court of appeals next held that there is no actual conflict between the New York lemon law and the Warranty Act and its regulations, since compliance with both is possible. Pet. App. A12-A13. Finally, the court held that the New York lemon law does not frustrate the purpose of the Warranty Act, since both statutes aim at consumer protection and encourage the fair and expeditious settlement of disputes. Pet. App. A16-A17.

DISCUSSION

In our view, the decision of the court of appeals is correct on all but one narrow issue. The court of appeals correctly held that neither the Warranty Act nor the FTC's Rule 703 expressly preempts state law concerning ADR mechanisms, and that federal law does not occupy the entire field of informal procedures for resolving war-

ranty disputes. Moreover, we agree with the court of appeals that it is possible to comply with both federal law and the New York lemon law. And if the New York law is construed as imposing additional requirements only on warrantors who offer ADR mechanisms as a prerequisite to suit under the New York lemon law, the state law does not frustrate the purposes of the federal Warranty Act.

The courts below, however, apparently construed the New York law as imposing additional requirements on warrantors who offer an ADR mechanism as a prerequisite to suit under the *federal* Warranty Act. In our view, States are free to provide additional warranty rights and remedies under *state* law, but are not free to alter the pre-judicial procedures of the *federal* cause of action established by the Warranty Act and Rule 703. Accordingly, to the extent that the New York lemon law seeks to alter federal remedies, it is preempted.

Although the court of appeals failed to recognize the foregoing distinction, we do not believe that this case warrants further review. On the broad question presented, the court of appeals correctly held that States are not precluded from legislating concerning informal mechanisms for resolving warranty disputes. Contrary to petitioners' contention (Pet. 7-9), there is no genuine conflict among the circuits on this issue. The question whether a State can prohibit a warrantor from offering a program that meets federal minimum requirements solely as a prerequisite to suit under federal law is a considerably narrower issue that was not squarely considered or decided by the courts below and may not arise with great frequency. Moreover, the States and the lower courts have not had an opportunity to consider the views of the FTC on this issue, which are set out for the first time in this brief.

1. Federal law, including federal regulations promulgated pursuant to authority delegated by Congress, may expressly or impliedly supplant state law. *City of New*

York v. *FCC*, 486 U.S. 57, 63-64 (1988); *Fidelity Fed. Sav. & Loan Ass'n* v. *De la Cuesta*, 458 U.S. 141, 153-154 (1982). Congress, or an administrative agency acting within its delegated authority, can preempt state law by so stating in express terms. *Schneidewind* v. *ANR Pipeline Co.*, 485 U.S. 293, 299 (1988). In the absence of explicit statutory language, courts will infer an intent to preempt state law in two situations. First, "when Congress intends that federal law occupy a given field, state law is preempted." *California* v. *ARC America Corp.*, 109 S. Ct. 1661, 1665 (1989). Second, even if Congress has not occupied the field entirely, state law is preempted to the extent that it actually conflicts with federal law, either because it is impossible to comply with both, *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 141-143 (1963), or because "the application of state law would 'frustrate specific objectives' of federal legislation," *Boyle* v. *United Technologies Corp.*, 487 U.S. 500, 507 (1988) (quoting *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715, 728 (1979)); see also *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941).

2. As both courts below correctly recognized (and as petitioners implicitly concede), neither the Warranty Act nor the FTC's regulations expressly preempt state regulation of informal procedures for resolving warranty disputes. The Warranty Act's preemption clause applies only to state warranty laws that concern "labeling or disclosure with respect to written warranties or performance thereunder." 15 U.S.C. 2311(c)(1)(A). It is clear that laws concerning ADR mechanisms do not fall within the narrow scope of this provision. In addition, the FTC's regulations concerning ADR mechanisms do not expressly preempt state law.

We also agree with the court of appeals that neither Congress nor the FTC intended to occupy the entire field of informal procedures for resolving warranty disputes. This Court has stated that "[w]hen Congress legislates in a field traditionally occupied by the States, 'we start

with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *California* v. *ARC America Corp.*, 109 S. Ct. 1661, 1665 (1989) (quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). There is no doubt that consumer protection and warranty law traditionally are areas of state regulation. As the court of appeals noted (Pet. App. A2), warranties were governed exclusively by the Uniform Commercial Code and state common law until Congress enacted the Warranty Act in 1975. See also *Chrysler Corp.* v. *Texas Motor Vehicle Comm'n*, 775 F.2d 1192, 1205 (5th Cir. 1985) (consumer protection an area of traditional state regulation). Thus, Congress is presumed not to have occupied the field of informal procedures for resolving warranty disputes absent a clear and manifest purpose to do so. Congress expressed no such purpose in the Warranty Act. On the contrary, the Warranty Act's saving clause broadly provides that nothing in the Act "shall invalidate or restrict *any* right or remedy of any consumer under State law or any other Federal law." 15 U.S.C. 2311(b)(1) (emphasis added).[2]

The legislative history of the Warranty Act confirms that Congress did not intend to foreclose all state regulation of ADR mechanisms. According to the Conference Report, "if a consumer chooses to seek redress without

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[2] The provisions concerning informal dispute resolution procedures appear in the section of the Warranty Act concerning remedies, see 15 U.S.C. 2310, and are properly viewed as within the rights and remedies preserved by the saving clause. Petitioners' contrary assertion that informal dispute resolution procedures are "a totally new field not traditionally a subject of state regulation," Pet. Reply Br. 4, is unpersuasive. See *Chrysler Corp.*, 755 F.2d at 1206 (declining to draw a distinction between "substantive" and "procedural" remedies). Petitioners also assert (Pet. 17) that Congress intended the saving clause to preserve only rights and remedies in existence in 1975. The language of the Act draws no such distinction.

utilizing the provisions of [15 U.S.C. 2310, 15 U.S.C. 2311(b)] preserves all alternative avenues of redress, and utilization of any informal dispute settlement mechanism would then not be required by any provision of this Act." S. Conf. Rep. No. 1408, 93d Cong., 2d Sess. 27 (1974). In addition, the FTC has recognized that "the protections of the Warranty Act are in addition to, rather than in lieu of, warranty rights and remedies under State law," 43 Fed. Reg. 50,737 (1978), and that the goal of encouraging uniform warranty documents "is subordinate to that of permitting States to fashion their own scheme o[f] warranty rights and remedies which may be more protective than the minimum level of protection of the Federal Act." *Id.* at 50,738. In promulgating Rule 703, the FTC stated that "the consumer would be required to resort to [the] warrantor's complying mechanism only when pursuing rights or remedies newly created by [15 U.S.C. 2310]." 40 Fed. Reg. 60,191 (1975). Thus, "if a consumer seeks redress by pursuing rights and remedies not created by Title I of the Act," Rule 703 simply does not apply. See 16 C.F.R. 703.2(b)(3).

Because neither the Warranty Act nor Rule 703 purports to govern dispute settlement mechanisms for state law claims, the States remain free to provide different or additional remedies, including ADR mechanisms, as a matter of state law.[3]

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[3] In concluding that Congress did not intend to occupy the field, the court of appeals relied in part on Congress's direction to the FTC to establish "minimum requirements" for informal dispute settlement procedures. 15 U.S.C. 2310(a)(2). The court said that the phrase "strongly suggests that Congress intended federal law in this area to supplement, not supplant, the rights and remedies provided by state law." Pet. App. A8. We would not ascribe controlling significance to the phrase "minimum requirements." The statutory language might be construed either to permit warrantors to adopt additional, voluntary standards (see *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 168 n.19 (1978)), or to permit States to impose additional, mandatory standards on warrantors who offer an ADR mechanism as a prerequisite to suit under the Warranty

3. State law also is preempted to the extent that it actually conflicts with federal law. *California* v. *ARC America Corp.*, 109 S. Ct. at 1665. In our view, the answer to the question whether the New York lemon law conflicts with the Warranty Act depends upon interpretation of the New York statute.

a. If the New York lemon law is interpreted to impose additional requirements, over and above those established by Rule 703, only for ADR mechanisms offered as a prerequisite to suit under *state* law, then the state law does not conflict with the Warranty Act or Rule 703. If the lemon law is so construed, it is possible for warrantors to comply with both federal and state law in a variety of ways—for example, by setting up two ADR mechanisms (one that meets federal requirements, another that meets state requirements), or by not requiring consumers to resort to an ADR mechanism as a prerequisite to filing suit under the Warranty Act, or by declining to adopt any ADR mechanism. Nor would the lemon law, so construed, frustrate the purposes of federal law. Neither the Warranty Act nor Rule 703 purports to govern ADR mechanisms used for purposes of state law. Even if state law prescribes additional or conflicting ADR requirements, warrantors remain free to set up an ADR mechanism that meets only the minimum federal requirements as a prerequisite to suit under the Warranty Act.[4]

Act (see *Florida Lime & Avocado Growers*, 373 U.S. at 147-148). As we explain more fully, pp. 13-16, *infra*, we think the former interpretation is correct, given Congress's delegation of responsibility to the FTC and the FTC's considered decision to strike a particular balance between consumer interests and warrantor costs. Wholly apart from the "minimum requirements" language, however, the court of appeals plainly reached the correct result in holding that neither Congress nor the FTC intended to occupy the entire field of informal warranty dispute resolution mechanisms.

[4] It is possible that, in practice, some warrantors will be unwilling to bear the expense of operating two separate ADR mechanisms. But neither Congress nor the FTC has made this empirical determination. And even if warrantors were unwilling to operate two

The Fifth Circuit recognized the validity of such a dual system in *Chrysler Corp.* v. *Texas Motor Vehicle Comm'n*, 755 F.2d 1192 (1985). In that case, the court noted that the Texas ADR mechanism operated separately from "alternative private mediation systems under section 110 of Magnuson-Moss." *Id.* at 1206. Consequently, Texas consumers could choose between a mechanism created under the Warranty Act, or invoke the state-run system, or even pursue one remedy and then the other. *Ibid.*

b. Although it was not a central focus of the litigation, the courts below appear to have construed the New York lemon law as imposing additional requirements even on ADR mechanisms established solely as a prerequisite to suit under the federal Warranty Act. See Pet. App. A4-A5, A8, A15, A19. Under this more expansive interpretation of the New York law, a warrantor is *not* permitted to establish a mechanism that meets only the minimum requirements of Rule 703 as a prerequisite to suit under the Warranty Act. Nor is a warrantor permitted to operate one mechanism for purposes of federal law and another for state law purposes. Instead, a warrantor wishing to require consumers to resort to an ADR process before suing under the Warranty Act must establish a mechanism that meets the requirements of state law.

Even if the New York lemon law is interpreted expansively to apply to ADR mechanisms offered solely as a prerequisite to suit under the Warranty Act, we agree with the court of appeals that it is possible for warrantors to comply with both federal and state law. A warrantor

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ADR mechanisms, they might choose to operate a single mechanism that meets federal requirements under the Warranty Act. As the Fifth Circuit noted in *Chrysler Corp.* v. *Texas Motor Vehicle Comm'n*, 755 F.2d 1192, 1206 (1985), "[t]here are many reasons why a consumer might prefer the informal proceedings offered by his manufacturer at no charge under [the Warranty Act] to [a] state-run proceeding * * * in which a hearing is conducted and the rules of evidence apply."

could refrain from requiring consumers to resort to its ADR mechanism as a prerequisite to suit under the Warranty Act, or it could adopt the more stringent state law procedures to the extent not prohibited by Rule 703.[5] Alternatively, it could decline to adopt any mechanism. In our view, however, the New York lemon law, so interpreted, "interferes with the methods by which the federal statute was designed to reach [its] goal," *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 494 (1987), and is to that extent preempted.[6]

To determine whether a particular state law interferes with the methods by which a federal statute is designed to reach its goal, one must first identify with precision the federal goal or goals at issue. Respondent points to the "broad consumer protection goal of the [Warranty] Act" (Br. in Opp. 10), and suggests that any state law that favors consumers furthers rather than frustrates the

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[5] We disagree with petitioners' assertion (Pet. 13-15) that a warrantor who chooses to be bound by decisions of the ADR mechanism violates Rule 703. Petitioners rely on 16 C.F.R. 703.5(j) ("[d]ecisions of the Mechanism shall not be legally binding on any person") and 40 Fed. Reg. 60,211 (1975) ("reference within the written warranty to any binding, nonjudicial remedy is prohibited by the Rule and the Act"). Although it is true that warrantors cannot require *consumers* to be bound by the decision of an ADR mechanism operated under Rule 703, the FTC has never determined that *warrantors* are barred from accepting decisions in favor of the consumer as binding on the warrantor. Rule 703 generally does not prevent warrantors from choosing to adopt ADR mechanisms with features more favorable to consumers than those required by Rule 703. And Rule 703 specifically encourages warrantors to accept informal decisions by obligating them to act in good faith. See 16 C.F.R. 703.5(j).

[6] In reaching this conclusion, we recognize that courts should not lightly infer preemption, and that this is particularly so where, as here, the field is one traditionally regulated by the States. See *Boyle* v. *United Technologies Corp.*, 487 U.S. at 507-508 (1988) (noting, in the context of displacement of state law by federal common law, that a conflict is more readily found where the area is "one of unique federal concern").

purpose of the Act and Rule 703. This approach ignores the Act's specific goal of encouraging warrantors to establish ADR mechanisms. It also allows the States to substitute their judgment for the FTC's approach in Rule 703. Petitioners, on the other hand, contend that Congress intended to grant warrantors a "federal right * * * to structure their warranty programs in accordance with the needs of consumers and the demands of the marketplace." Pet. 20. That contention is not easily reconciled with the Act's broad saving clause, see page 2, *supra*.

While the general goal of the Warranty Act undoubtedly is consumer protection, Congress also expressed a more specific purpose in the ADR provisions—"to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms." 15 U.S.C. 2310(a)(1). Congress directed the FTC to prescribe rules to achieve this goal. 15 U.S.C. 2310(a)(2). In promulgating Rule 703, the FTC stated:

> The intent of the Act is to provide for fair and expeditious settlement of consumer warranty disputes, through informal mechanisms established voluntarily by warrantors. The Commission has determined that *this legislative scheme is best implemented by a careful balancing of consumer and warrantor interests.* The Rule is intended to establish a framework for fair and expeditious settlement of warranty disputes at cost levels acceptable to warrantors.

40 Fed. Reg. 60,193 (1975) (emphasis added). Consequently, the relevant inquiry is whether the New York lemon law (if interpreted to affect the federal remedy) impermissibly alters the balance of consumer and seller interests struck by the Warranty Act and Rule 703.[7]

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[7] This Court has recognized that state law that upsets a balance of interests addressed by federal law is preempted. In *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 494 (1987), the Court held that certain aspects of a State's nuisance law improperly inter-

We believe that application of the New York lemon law to ADR mechanisms established solely as a prerequisite to suit under federal law would impermissibly alter the balance of interests established in Rule 703. In adopting that Rule, the FTC—in order to achieve a balance between the interests of consumers and warrantors—specifically rejected proposals to make mechanism decisions unilaterally binding upon warrantors, to require mandatory oral hearings, and to impose more extensive recordkeeping requirements on warrantors.

For example, Rule 703 provides that "[d]ecisions of the mechanism shall not be legally binding on any person." 16 C.F.R. 703.5(j). In adopting this provision, the FTC rejected a proposal that mechanism decisions be made binding at the option of the consumer. Instead, the FTC opted for a provision requiring warrantors to act in good faith and allowing the mechanism decision to be introduced as evidence in any subsequent civil action. The FTC concluded that an adverse decision would have "far greater impact on the warrantor than it will on consumer," but would not unduly discourage warrantors from adopting mechanisms. 40 Fed. Reg. 60,210-60,211 (1975). The FTC was "not persuaded that making this impact on the warrantor even greater [i.e., unilaterally binding] would benefit consumers more than it would discourage warrantors from adopting mechanisms." *Id.* at 60,211. Thus, application of the New York lemon law to ADR mechanisms established under the Warranty Act would substitute the judgment of the New York legislature for that of the FTC.

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fered with the Clean Water Act, because circumvention of the federal permit system would result in "upsetting the careful balance of public and private interests so carefully addressed by the Act." See also *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 721 (1985) (ordinance providing more restrictive standards for the collection of blood plasma not preempted by federal regulation establishing minimum safety standards because "[n]either Congress nor the FDA * * * has struck a particular balance between safety and quantity").

Similarly, 16 C.F.R. 703.5(f) provides for an oral hearing only upon the agreement of both parties. The FTC rejected proposals to require a hearing at the request of the consumer because it concluded that "the need to foster a variety of Mechanisms, including national ones, is greater than the need for oral presentations at the behest of the parties," 40 Fed. Reg. 60,209 (1975), and that mandatory hearings could be costly for consumers, *ibid.*

In addition, the FTC set the recordkeeping requirements of Rule 703 "with a view to acceptable cost levels."[8] 40 Fed. Reg. 60,211 (1975). The FTC deleted a provision requiring computation of the average time between referral to an ADR process and final resolution on the ground that such a requirement "is burdensome to compute and of questionable value." *Id.* at 60,213. Instead, the FTC opted for a provision requiring a record of decisions delayed beyond 40 days. *Id.* at 60,212-60,213. The New York lemon law resurrects the provision rejected by the FTC. See N.Y. Gen. Bus. Law § 198-a(m)(3)(iv) (McKinney 1988).

In short, application of the New York lemon law to federal remedies would "upset the balance of [consumer and warrantor] interests so carefully addressed by [Rule 703]." *International Paper Co.* v. *Ouellette*, 479 U.S. at 494. The FTC, exercising authority delegated by Congress, has determined that a particular balance of consumer and warrantor interests will best achieve the goals of the Warranty Act. To the extent that the New York law would substitute the judgment of the New York legislature for that of the FTC, it is preempted.

Our conclusion is reinforced by the fact that the New York law, so interpreted, would alter the procedures by

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[8] Because warrantors may be expected to respond to increased costs by raising prices or declining to offer an ADR alternative, a warrantor's interest in a low-cost ADR system may be viewed as equivalent to the consumer's long-term interest in efficient resolution of complaints.

which consumers pursue their federal right of action under the Warranty Act. It is fundamental under the Supremacy Clause that a State may not curtail a cause of action authorized by federal law or impose limits on federally prescribed rights. See generally *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.*, 445 U.S. 97, 104 (1980) (a State cannot grant immunity from the Sherman Act simply by declaring lawful a violation of the federal statute); *Testa* v. *Katt*, 330 U.S. 386, 394 (1947) (States generally are not free to deny enforcement of claims growing out of a valid federal law).

4. Although the court of appeals failed to recognize the distinction between ADR mechanisms offered as a prerequisite to suit under the Warranty Act and ADR mechanisms offered for other purposes, we nevertheless believe that this case warrants no further review. The court of appeals correctly held that federal law has not occupied the field of informal methods for resolving warranty disputes. There is no real conflict among the circuits on this issue. Like the Second Circuit in this case, both the Fifth and the Eighth Circuits have held that neither the Warranty Act nor Rule 703 occupies the field of warranty dispute resolution mechanisms. See *Chrysler Corp.*, 755 F.2d at 1205-1206; *Automobile Importers of America* v. *Minnesota*, 871 F.2d 717, 719-721 (8th Cir. 1989).

We do not read the Fourth Circuit's opinion in *Wolf* v. *Ford Motor Co.*, 829 F.2d 1277 (1987), as reaching a contrary result. Under the approach we take to this case, *Chrysler Corp.*, *Automobile Importers*, and *Wolf* are reconcilable. In holding that the Texas lemon law did not interfere with the goals of the Warranty Act, the court in *Chrysler Corp.* expressly recognized that Texas law did not prevent the establishment of separate mechanisms for purposes of state and federal law. See 755 F.2d at 1206 ("[T]he preclusive effect of [15 U.S.C. 2310] is limited to rules governing informal dispute resolution procedures

created by private warrantors and does not affect such schemes where provided as an option for consumers by state law."). Petitioners simply ignore the second half of the court's statement. See Pet. 8; Pet. Reply Br. 2. The Minnesota lemon law that was at issue in *Automobile Importers* requires warrantors to provide a state law mechanism. 871 F.2d at 717. Thus, unlike the elective provisions enacted by New York and Texas, there is no danger that warrantors will choose to withdraw from the alternative dispute resolution arena as a result of the additional state requirements. In addition, it is not clear that the Minnesota law at issue in *Automobile Importers* precludes a warrantor from establishing a mechanism that complies only with the minimal requirements of Rule 703 for purposes of the federal cause of action, so long as it meets the additional requirements for purposes of the state law cause of action. See 871 F.2d at 719 n.4 (quoting statute).

In *Wolf*, the court of appeals held that a consumer could not challenge, on state law grounds, the fairness of a federal ADR mechanism established under Rule 703. The court's decision rested on the provisions of the Warranty Act delegating to the FTC authority to "review the bona fide operation of any dispute settlement procedure," 15 U.S.C. 2310(a)(4), and obtain injunctive or other remedies against noncomplying ADR mechanisms, 15 U.S.C. 2310(c)(1). See 829 F.2d at 1280. The court held that, where an ADR mechanism is "established under the auspices of the [Warranty] Act, *id.* at 1278, "any attack on the fairness or legitimacy of [the] mechanism must be through [the FTC's] administrative channels," *id.* at 1279 n.3. That limited holding is consistent with our view that States generally are free to regulate informal mechanisms for resolving warranty disputes, except to the extent that they are established as a prerequisite to suit under the Warranty Act.

In the present case, our disagreement with the court of appeals is a narrow one. Moreover, the courts below did

not address directly the distinction between ADR mechanisms established as a prerequisite to suit under the Warranty Act and ADR mechanisms established for other purposes. Instead, both courts focused on whether federal law precludes the States from requiring *any* ADR mechanism to meet requirements that exceed those of Rule 703. Thus, it is possible that the Second Circuit would adopt the view expressed in this brief if it were presented in a future case. In addition, it may be desirable to allow the States an opportunity to reexamine their lemon laws with an eye toward determining whether they intend to regulate ADR mechanisms that are employed solely for purposes of federal law. And respondent may wish to reconsider, in light of the views of the FTC, whether the New York lemon law should be interpreted to apply to ADR mechanisms offered solely as a prerequisite to suit under the Warranty Act. Finally, the practical importance of the narrow issue on which we depart from the Second Circuit remains uncertain, and the FTC retains authority to address the issue in a rulemaking proceeding. See n.1, *supra*. For these reasons, and particularly because the court of appeals may not regard its opinion in this broad declaratory judgment proceeding to have definitively resolved the narrow question on which we have expressed concern, we believe that a grant of certiorari in this case would be premature.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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